

The Mediation Process

[Draft]

Mediation is a voluntary problem-solving process. In mediation the parties work together using the help of a neutral third party, called a “mediator,” to try to reach a mutually satisfactory solution to their dispute. The decision-making power in mediation rests with the parties. The mediator is not a judge, does not take sides in the dispute, and does not tell the parties what to do. The mediator is trained to help the parties communicate with one another in order to generate possible solutions. Mediation works as a problem-solving process because the parties participate voluntarily and in good faith. Any of the parties, even the mediator, may withdraw from the mediation at any time and for any reason.

In mediation the parties discuss and explore ways that they might reach a solution. Because the mediation process works best when there is open and honest communication, the parties and the mediator are required to keep confidential all discussions and all information that is revealed in mediation sessions. Any notes taken during mediation are destroyed at its conclusion and the parties must agree not to subpoena the mediator to testify for either party in any matter related to the mediation. The parties must also agree not to subpoena or use as evidence in any future proceeding any documents, other than a final agreement signed by all parties, created by anyone during mediation sessions.

When the parties agree on a solution in mediation they put it in writing which, when signed, becomes a binding contract. Aside from this final written agreement signed by all parties, no one is bound by anything said or done during mediation. If the parties do not reach agreement in mediation they are free to take any other appropriate measures available to them. For instance, if a party has a right to a due process hearing, the party does not waive that right if a solution is not found in mediation.

If you would like to try mediation, please contact [relevant state agency] at [phone number] with your request. The [relevant state agency] will request the other party to participate with you in mediation. If the other party agrees, the [relevant state agency] will try to schedule the mediation at a time convenient to all parties. The [relevant state agency] may request the parties to provide additional information before the mediation.